



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 151

[EPA-HQ-OLEM-2017-0444; FRL-9989-49-OLEM]

RIN 2050-AG87

Clean Water Act Hazardous Substances Spill Prevention Proposed Action under Clean Water Act Section 311(j)(1)(C); Notification of Data Availability - Responses to 2018 Clean Water Act Hazardous Substances Survey (OMB Control No. 2050-0220)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; notification of data availability.

SUMMARY: EPA is making available for review and comment the data received from respondents of a voluntary survey, “2018 Clean Water Act Hazardous Substances Survey” (OMB Control No. 2050-0220). This data is being made available consistent with the preamble to the proposed action “Clean Water Act Hazardous Substances Spill Prevention” published on June 25, 2018. The data collected through the voluntary survey is available in Regulations.gov at Docket ID: EPA-HQ-OLEM-2017-0444.

DATES: Comments on data from respondents of the voluntary survey posted in Docket ID: EPA-HQ-OLEM-2017-0444 must be received on or before **[Insert date 14 days after date of publication in the Federal Register]**.

ADDRESSES: Submit comments to Docket ID: EPA-HQ-OLEM-2017-0444 in the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any

information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gregory Wilson, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave., NW (Mail Code 5104A), Washington, DC, 20460; telephone number: (202) 564-7989; email address: wilson.gregory@epa.gov.

SUPPLEMENTARY INFORMATION: Detailed background information on the Information Collection Request (ICR) process and the development of the voluntary survey may also be found in Regulations.gov at Docket ID: EPA-HQ-OLEM-2017-0444. The proposed action associated with the voluntary survey, Clean Water Act Hazardous Substances Spill Prevention, was published in the Federal Register on June 25, 2018 (83 FR 29499). Additional detailed background information on the proposed action can be found in Regulations.gov at Docket ID: EPA-HQ-OLEM-2018-0024.

I. What action is EPA taking?

EPA's initial data gathering efforts for the Clean Water Act (CWA) Hazardous Substances (HS) Spill Prevention proposed action focused on assessing the scope of historical CWA HS discharges, identifying relevant industry practices, and identifying regulatory

requirements related to preventing CWA HS discharges. EPA also developed a voluntary survey to collect information from states, tribes and territories focused on the universe of potentially-regulated facilities and on CWA HS discharges. EPA anticipated using relevant survey responses to further inform the proposed action.

EPA has already made the voluntary survey data available in Regulations.gov at Docket ID: EPA-HQ-OLEM-2017-0444, provided notice of its availability on the EPA website for this action, and provided direct notice to the litigants that the data was available. Nonetheless, EPA is publishing this Notice of Data Availability to ensure the public has an opportunity to review and comment on the data EPA received in response to the voluntary survey. The Agency will consider the supplemental data and related comments as appropriate in the final Clean Water Act Hazardous Substances Spill Prevention action.

II. What is the background for this action?

On July 21, 2015, EPA was sued for failing to comply with the alleged duty to issue regulations to prevent and contain CWA hazardous substance discharges. On February 16, 2016, the United States District Court for the Southern District of New York entered a Consent Decree between EPA and the litigants that required EPA to sign a notice of proposed rulemaking pertaining to the issuance of hazardous substance regulations and take final action after notice and comment on said notice. On June 25, 2018, based on an analysis of the frequency and impacts of reported CWA HS discharges and the existing framework of EPA regulatory requirements, EPA proposed to establish no new spill prevention requirements for CWA HS under Clean Water Act (CWA) Section 311 at this time.

EPA's initial data gathering efforts for the proposed action focused on assessing the scope of historical CWA HS discharges, identifying relevant industry practices, and identifying

regulatory requirements related to preventing CWA HS discharges. EPA also used available data to estimate the universe of potentially regulated entities subject to this action. Additionally, EPA developed a voluntary survey intended to collect information from states, territories, and tribes focused on the universe of potentially-regulated facilities and on a 10-year period of CWA HS discharges.

On June 22, 2018, EPA issued the voluntary survey to respondents identified as potential custodians of data relevant to the survey. The voluntary survey was directed at State and Tribal Emergency Response Coordinators (respondents with custodial responsibility for data representing the potentially affected “facility universe” that produce, store, or use CWA hazardous substances), as well as state, tribal, and territorial government agencies with custodial responsibility for data on CWA hazardous substance impacts to drinking water utilities and fish kills potentially caused by discharge(s) of CWA hazardous substances. EPA provided 45 days to submit data responsive to the voluntary survey, requesting that information be submitted by August 6, 2018. EPA received responses from: Alabama, California, Delaware, Hawaii, Indiana, Kentucky, Maryland, Minnesota, Missouri, New Hampshire, New Mexico, Oregon, Rhode Island, and Texas. The data collected through the voluntary survey is available for review and comment in Regulations.gov at Docket ID: EPA-HQ-OLEM-2017-0444.

Dated: February 6, 2019.

Reggie Cheatham,

Director, Office of Emergency Management.

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